



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,532	06/13/2001	Martin L. Anderson	20010202.ORI	5010

23595 7590 01/13/2003  
NIKOLAI & MERSEREAU, P.A.  
900 SECOND AVENUE SOUTH  
SUITE 820  
MINNEAPOLIS, MN 55402

EXAMINER
----------

KRECK, JOHN J

ART UNIT	PAPER NUMBER
----------	--------------

3673  
DATE MAILED: 01/13/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/880,532	ANDERSON, MARTIN L.
Examiner	Art Unit	
John Kreck	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 December 2002 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-22 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 10 September 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6)  Other:

**DETAILED ACTION**

Claims 1-22 are pending in this application.

1. The declaration under 37 CFR 1.132 filed 12/19/02 is insufficient to overcome the rejection of claims 1-222 based upon Anderson, Fisher, and Hancock as set forth in the last Office action because:

a. There is insufficient evidence that the alleged increased sales derive from the claimed invention. In ex parte proceedings before the Patent and Trademark Office, an applicant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. See *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996) (Inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention.). Merely showing that there was commercial success of an article which embodied the invention is not sufficient. *Ex parte Remark*, 15 USPQ2d 1498, 1502-02 (Bd. Pat. App. & Inter. 1990). Compare *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir. 1988) (In civil litigation, a patentee does not have to prove that the commercial success is not due to other factors. "A requirement for proof of the negative of all imaginable contributing factors would be unfairly burdensome, and contrary to the ordinary rules of evidence.").

and;

b. The sales figures are not adequately defined. Gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988).

It is suggested that a new declaration should be submitted with relevant evidence, if available.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the solenoid and switches in the handle must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3673

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-13, 15, 17, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson, et al. (U.S. Patent number 4,162,809) in view of Fisher (U.S. Patent number 5,426,805).

Anderson shows a floor-stripping machine comprising a main body with wheels; a floor engaging cutting head member attached to the main body; and an electric motor mounted on the main body and mechanically connected to the cutting head member. The Anderson device is not self propelled, and fails to show the drive axle, drive wheels, hydraulic pump, reservoir, pressure outlet, hydraulic valve, hydraulic motor, and output shaft.

Fisher shows a similar device which is self-propelled and incorporates a drive axle (100) attached to drive wheels (12), hydraulic pump (30) attached to the main body and which is driven by the motor of the device, the pump coupled to a hydraulic fluid reservoir (16), the pump having an inlet coupled to the reservoir, and a pressure outlet coupled through a hydraulic valve to a hydraulic motor, the hydraulic motor having an output shaft coupled to the axle for driving the drive wheels. It is readily apparent that hydraulic components in combination with the drive axle reduce operator fatigue.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Anderson device to have a drive axle attached to drive wheels, hydraulic pump attached to the main body and which is driven by the motor of the device, the pump coupled to a hydraulic fluid reservoir, the pump having an inlet

coupled to the reservoir, and a pressure outlet coupled through a hydraulic valve to a hydraulic motor, the hydraulic motor having an output shaft coupled to the axle for driving the drive wheels as called for in claim 1, and as taught by Fisher, in order to reduce operator fatigue.

With regards to claim 2; Fisher teaches the valve controls the direction of rotation of the drive wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the direction of rotation of the drive wheels as called for in claim 2, in order to reduce operator fatigue.

With regards to claim 3; Fisher teaches the valve controls the speed of rotation of the drive wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the speed of rotation of the drive wheels as called for in claim 3, in order to reduce operator fatigue.

With regards to claim 4; Fisher teaches the valve controls the speed of rotation of the drive wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the speed of rotation of the drive wheels as called for in claim 4, in order to reduce operator fatigue.

With regards to claim 5, Anderson shows the handle.

With regards to claim 6; Fisher teaches the valve controls in the handle, but the actual valves in the body; applicant has not disclosed that the valve and hydraulic lines

Art Unit: 3673

located in the handle provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with valve controls in the handle and the actual valves and hydraulic lines in the body because the location of the valves is irrelevant to the operation of the machine. Therefore, it would have been obvious to one of ordinary skill in the art to further modify the Anderson device to obtain the invention as specified in claim 6.

Regarding independent claim 7:

Anderson shows a floor-stripping machine comprising a frame, an axle having a pair of wheels; a scrapper blade assembly resiliently mounted to the frame; and an electric motor mounted on the main body and mechanically connected to the cutting head member. The Anderson device is not self propelled, and fails to show the hydraulic circuit.

Fisher shows a similar device which is self-propelled and incorporates a hydraulic circuit including a hydraulic pump, fluid reservoir, motor and control valve mechanism, the pump driven by the motor of the device to circulate hydraulic fluid from the reservoir to the motor via the valve mechanism and the motor coupled in driving relation to the axle. It is readily apparent that hydraulic circuit reduces operator fatigue.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Anderson device to have a hydraulic circuit including a hydraulic pump, fluid reservoir, motor and control valve mechanism, the pump driven by

Art Unit: 3673

the motor of the Anderson device to circulate hydraulic fluid from the reservoir to the motor via the valve mechanism and the motor coupled in driving relation to the axle as called for in claim 7, and as taught by Fisher, in order to reduce operator fatigue.

With regards to claim 8; Fisher teaches the valve controls the direction of rotation of the ground engaging wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the direction of rotation of the ground engaging wheels as called for in claim 8, in order to reduce operator fatigue.

With regards to claim 9; Fisher teaches the valve controls the speed of rotation of the ground engaging wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the speed of rotation of the ground engaging wheels as called for in claim 9, in order to reduce operator fatigue.

With regards to claim 10; Fisher teaches the valve controls the speed of rotation of the ground engaging wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve controlling the speed of rotation of the ground engaging wheels as called for in claim 10, in order to reduce operator fatigue.

With regards to claim 11; Fisher teaches the safety valve (32); thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the safety valve as called for in claim 11, in order to provide additional safety.

With regards to claim 12; Fisher teaches the valve (32) provides fluid flow from the pump to the tank; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the valve (32) provides fluid flow from the pump to the tank as called for in claim 12, in order to reduce operator fatigue.

With regards to claim 13; Fisher teaches the valve controls in the handle, but the actual valves in the body; applicant has not disclosed that the valve and hydraulic lines located in the handle provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with valve controls in the handle and the actual valves and hydraulic lines in the body because the location of the valves is irrelevant to the operation of the machine. Therefore, it would have been obvious to one of ordinary skill in the art to further modify the Anderson device to obtain the invention as specified in claim 13.

With regards to claim 15; Fisher teaches the control device (34); thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the control device as called for in claim 15, in order to reduce operator fatigue.

With regards to claim 17, Anderson shows the handle.

With regards to claim 18; Fisher teaches the valve in the handle; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have

further modified the Anderson device to have included the valve in the handle as called for in claim 18, in order to reduce operator fatigue.

With regards to claim 20; Fisher teaches the valve controls the speed of rotation of the ground engaging wheels; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the speed control valve controlling the speed of rotation of the ground engaging wheels as called for in claim 20, in order to reduce operator fatigue.

With regards to claim 21; Fisher teaches the pressure safety valve (32); thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included the pressure safety valve as called for in claim 21, in order to reduce operator fatigue.

With regards to claim 22, Anderson shows a switch on the handle (25).

2. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson and Fisher as applied to claim 13 above, and further in view of Hancock (U.S. Patent number 6,142,171).

Anderson (as modified in view of Fisher) teaches all of the limitations of claim 13, from which these claims depend. Anderson and Fisher fail to teach the solenoid operated cartridge valves and control switches. Solenoid valves are well known, and are used in place of manual valves because they can be easier to operate and are more precise. Hancock shows solenoid operated cartridge valves.

It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included solenoid operated cartridge valves and control switches as called for in claim 14 because they are easier to operate and are more precise.

With regards to claim 16; Fisher teaches the valve circulates fluid from the pump to the reservoir when the valves are not actuated; thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device (as modified in view of Fisher and Hancock) to have included valve circulates fluid from the pump to the reservoir when the switches are not actuated as called for in claim 16, in order to reduce wear on the motor.

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Fisher and further in view of Hancock.

Anderson shows a floor-stripping machine comprising a main body with wheels; a floor engaging cutting head member attached to the main body; and an electric motor mounted on the main body and mechanically connected to the cutting head member. Anderson also shows the handle with a first end and a second end and first and second handle bars. The Anderson device is not self propelled, and fails to show the drive axle, drive wheels, hydraulic pump, reservoir, pressure outlet, hydraulic valve, hydraulic motor, and output shaft.

Fisher shows a similar device which is self-propelled and incorporates a drive axle (100) attached to drive wheels (12), hydraulic pump (30) attached to the main body

Art Unit: 3673

and which is driven by the motor of the device, the pump coupled to a hydraulic fluid reservoir (16), the pump having an inlet coupled to the reservoir, and a pressure outlet coupled through a hydraulic valve to a hydraulic motor, the hydraulic motor having an output shaft coupled to the axle for driving the drive wheels. Fisher also shows a hydraulic valve system, first (113, 114), second (118), third (116), and fourth (120, 126) hydraulic lines. It is readily apparent that hydraulic components in combination with the drive axle reduce operator fatigue.

Anderson and Fisher fail to teach the solenoid valves and control switches. Solenoid valves are well known, and are used in place of manual valves because they can be easier to operate and are more precise. Hancock shows solenoid operated cartridge valves. Both Fisher and Anderson teach the use of controls in the handle.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Anderson device to have a drive axle attached to drive wheels, hydraulic pump attached to the main body and which is driven by the motor of the device, the pump coupled to a hydraulic fluid reservoir, the pump having an inlet coupled to the reservoir, and a pressure outlet coupled through a hydraulic valve to a hydraulic motor, the hydraulic motor having an output shaft coupled to the axle for driving the drive wheels and the hydraulic valve system, first, second, third, and fourth hydraulic lines as taught by Fisher, in order to reduce operator fatigue. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Anderson device to have included solenoid valve and control switches in the handles because they are easier to operate and are more precise. With

Art Unit: 3673

regards to the limitations of the valve system in the handle and the location of the switches on the opposite handles; applicant has not disclosed that the valve and switch location in the handle provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with valve controls in the handle and the actual valves and hydraulic lines in the body because the location of the valves is irrelevant to the operation of the machine. Therefore, it would have been obvious to one of ordinary skill in the art to further modify the Anderson device to obtain the invention as specified in claim 19.

#### ***Response to Arguments***

4. Applicant's arguments filed 12/19/02 have been fully considered but they are not persuasive.

Applicant's declaration under 37 CFR 1.132 has been discussed above.

Applicant's further arguments that the proposed combination would not yield the claimed invention are not persuasive because the rejection was based on the teachings of the Fisher reference that hydraulic wheel drive is advantageous. Fisher's use of a gas motor does not diminish the value of Fisher's teaching regarding hydraulic wheel drive.

With regards to applicant's arguments concerning Anderson '566, the Anderson '566 patent has not been used in any rejection.

Art Unit: 3673

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 6:00 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3597 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.



John Kreck  
Examiner  
Art Unit 3673

  
January 9, 2003